IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14675 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPKUMAR KHODIDAS PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AD SHAH for Applicant(s) : 1,
MR MENGDEY ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR TEJAS P SATTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/07/2007

ORAL JUDGMENT

Present application has been filed under section 482 of Criminal Procedure Code by the applicant, - original accused for an appropriate order to quash and set aside the proceedings of M Case No.20 of 2002 of Mehsana City Police Station pending in the Court of learned Chief Judicial Magistrate, Mehsana. It is also further prayed to set aside the order of the learned Sessions Judge, Mehsana in Criminal Revision Application No.34/06.

2. That the respondent No.2, - original complainant filed complaint against the petitioner before the learned JMFC, Mehsana being M Case No.20 of 2002. That the learned JMFC directed investigation under section 156(3) of Criminal Procedure Code to Mehsana City Police Station. That the Investigating Officer after investigation, prayed for C summary on 14-11-02 and the learned Chief Judicial Magistrate, Mehsana by order dated 2-12-02 directed to issue notice to the complainant. The learned Chief Judicial Magistrate rejected C summary report by order dated 20-8-04 and directed further investigation in M Case No.20 of

2002 at Mehsana City Police Station. Again the investigation was carried out and the Police Inspector, Mehsana City Police Station forwarded the report to the Court of learned Chief Judicial Magistrate praying for C summary. By order dated 21-3-06, the learned Chief Judicial Magistrate after hearing the complainant and the accused, accepted C summary report. It appears that being aggrieved by the order passed by the learned Chief Judicial Magistrate dated 21-3-06 in accepting C summary report, original complainant respondent No.2 herein preferred Criminal Misc. Application No.34/06 before the learned Sessions Judge, Mehsana and the learned Sessions Judge, Mehsana after hearing parties by its order dated 11-9-06 has quashed and set aside the order passed by the learned Chief Judicial Magistrate dated 21-3-06 in accepting the C summary report and directed further inquiry. Being aggrieved by the order passed by the aforesaid order dated 11-9-06 passed by the learned Sessions Judge, Mehsana, the petitioner herein, - original accused has preferred the present application.

3. Shri AD Shah, learned advocate appearing on behalf

of the petitioner, original accused has vehemently submitted that the impugned order passed by the ld. Magistrate in quashing and setting aside the order of granting C summary report is without giving an opportunity to the petitioner and the same is in breach of principles of natural justice as well as section 397(2)/398 of Criminal Procedure Code. It is submitted that by him that when the order of granting C summary was subject matter in revision application u/s 397 of Criminal Procedure Code as per the proviso to section 397/398, no order adverse to the accused can be passed without giving an opportunity to the accused. It is submitted that in the present case, the revisional Court has not given an opportunity to the accused and therefore, it is requested to allow the present petition and to quash and set aside the order passed by the ld. Sessions Court, Mehsana dated 19-9-2006 passed in Criminal Misc. Application No.34/06. As this Court proposes to remand the matter to the learned Sessions Judge as the order passed by the learned Sessions Judge is passed without giving an opportunity to the petitioner, this Court has not considered the submission of the rival parties on merits.

4. Shri Satta, learned advocate appearing on behalf of the respondent No.2 original complainant has submitted that in the facts and circumstances of the case, as the order passed by the ld. Chief Judicial Magistrate granting C summary report was absolutely illegal and perverse, the ld. Sessions Judge has rightly set aside the order in exercising powers of the revisional jurisdiction and therefore, it is requested to dismiss the present application.

5. It is not in dispute that the ld. Chief Judicial Magistrate granted C summary report which came to be challenged by the respondent No.2 herein, - original complainant before the ld. Sessions Judge by way of Criminal Revision Application No.34 of 2006 and the said revision application was filed u/s 397 of Criminal Procedure Code. It is also an admitted position that the order passed by the ld. Chief Judicial Magistrate granting C summary report has been set aside by the ld. Sessions Judge without giving an opportunity to the petitioner, original accused. Now considering the provision of section 397 r/w section

398 of Criminal Procedure Code, before passing any order adverse to the petitioner, an opportunity of hearing ought to have been given by the ld. Sessions Judge. As the impugned order has been passed by the ld. Sessions Judge without giving an opportunity to the petitioner, the same is required to be quashed and set aside.

6. For the reasons stated above, the application succeeds. The judgment and order dated 11-9-06 passed by the learned Sessions Judge, Mehsana in Criminal Revision Application No.34/06 is hereby quashed and set aside and the matter is remanded to the learned Sessions Judge, Mehsana for deciding the said revision application afresh in accordance with law and on merits after giving an opportunity to the petitioner. The petitioner original accused to be joined as party respondent No.2 to the said Criminal Revision Application No.34 of 2006. In the facts and circumstances of the case, the ld. Sessions Judge is directed to decide and dispose of said Criminal Revision Application No.34/06 on remand as early as possible preferably within a period of four months from the date of receipt of this order. It also goes without saying that this

Court has not expressed any opinion on merits in favour of either parties and the impugned order has been set aside by this Court only on the ground that the petitioner was not heard and it is ultimately for the ld. Revisional Court to decide and dispose of the said revision application in accordance with law and on merits. Rule made absolute.

(M.R. Shah, J.)

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